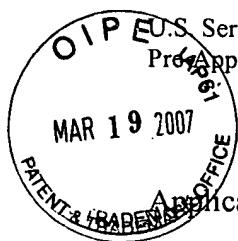


MAR 19 2007



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Seiji Kawa, et al.  
Appl. No. : 10/809,216  
Filed : March 25, 2004  
Title : INFORMATION CREATING APPARATUS, INFORMATION CREATING METHOD, REPRODUCING APPARATUS, REPRODUCING METHOD, AND PROGRAM  
Art Unit : 2178  
Examiner : Faber, David  
Confirmation No. : 6582

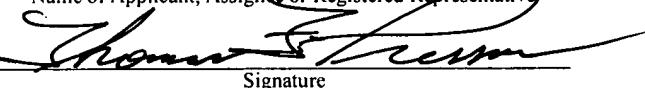
745 Fifth Avenue  
New York, NY 10151  
(212) 588-0800

**FIRST CLASS MAIL CERTIFICATE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 15, 2007.

Thomas F. Presson, Reg. No. 41,442

Name of Applicant, Assignee or Registered Representative

  
Signature

March 15, 2007

Date of Signature

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop Appeal Brief  
Commissioner For Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Final Rejection dated December 12, 2006 in the above-captioned application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. Please consider the reasons stated herein.

03/20/2007 EEKUBAY1 00000006 10809216

01 FC:1402

500.00 0P

## **REASONS FOR REQUEST**

Claims 9 and 11-14 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by EP 0855714 A2 to Yasuda et al. (hereinafter, merely “Yasuda”).

Claims 1 and 3-8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Yasuda in view of WO 99/48096 to Kelly et al. (hereinafter, merely “Kelly”).

Claim 1 recites, *inter alia*:

“An information creating apparatus for creating information to be provided to a reproducing apparatus for reproducing data, said information creating apparatus comprising:

...determining means for determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

relocating means for relocating data in proximity of said edit point if said determining means determines that it is impossible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

wherein said creating means creates said reproduction control information including information for indicating said data relocated by said relocating means as a reproduction object, and

wherein said relocating means determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means.” (emphasis added)

## **ARGUMENTS**

### **REJECTIONS UNDER 35 U.S.C. §101**

Applicants respectfully traverse the rejections of claims 1-6, 9, 11 and 12 under 35 U.S.C. §101. Applicants submit that claims 1-6, 9, 11 and 12 refer are apparatus claims and therefore comply with the statutory subject matter requirement.

Applicants request appropriate withdrawal and reconsideration of the 35 U.S.C. §101 rejections.

### **The §102 and §103 Rejections Should be Withdrawn Because the Cited References Do Not Disclose Each and Every Element Recited in the Claims**

As understood by Applicants, Yasuda relates to a digital signal editing apparatus and method where a plurality of coded data are read out from a storage medium allowing random access, and read-out coded data are decoded so as to be continuous temporally and made into an edited decoding data string.

As understood by Applicants, Kelly relates to recording, reproduction and/or editing of real time information on or from a disc like record carrier for enabling simultaneous reading and writing of real time information.

It is respectfully submitted that the applied combination of Yasuda and Kelly does not provide the disclosure of claim 1. Specifically, page 8 of the Office Action states, “Yasuda fails to disclose determining means for determining... and relocating means for relocating...”. Applicants respectfully traverse the contention that Kelly provides the subject matter missing from Yasuda.

Pages 8-9 of the Office Action cite page 1, lines 1-5 and lines 15-35 of Kelly, which states, “[t]his stream satisfies a HFFF condition implying that at least every second fragment is fully filled...both the last fragment before the bridge and the first fragment after the bridge must be full since it is assumed that the original streams satisfy the FFHF condition...tried to preserve the FFHF condition by reallocating the fragment before the bridge, the bridge fragment and the fragment after the bridge...”.

Applicants submit that Yasuda and Kelly, taken alone or in combination, fail to teach or suggest the features of claim 1. Specifically, Applicants submit that there is no teaching or suggestion of an information creating apparatus for creating information to be provided to a reproducing apparatus for reproducing data, said information creating apparatus comprising determining means for determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and relocating means for relocating data in proximity of said edit point if said determining means determines that it is impossible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and wherein said creating means creates said reproduction control information including information for indicating said data relocated by said relocating means as a reproduction object, and wherein said relocating means determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means, as recited in claim 1.

Indeed, Applicants submit that reallocating the fragment before the bridge, the bridge fragment and the fragment after the bridge, as disclosed in Kelly, is completely different and provides no disclosure of relocating means for relocating data in proximity of said edit point if said determining means determines that it is impossible for said reproducing

**apparatus to reproduce in real time said data resulting from said editing process wherein**  
**said relocating means determines the location at which to create data in proximity of the**  
**edit point in accordance with the result of the determining means.**

Furthermore, Applicants submit that Yasuda does not disclose the selecting from several blank areas as disclosed in figure 3B of the present invention where the bridge clip (GOP (m+2), GOP(o) and GOP (n)) is not relocated into the blank area #2, but the blank area #1.

Therefore, Applicants submit that independent claim 1 is patentable.

For reasons similar to those described above with regard to independent claim 1, independent claims 7 and 8 are also believed to be patentable.

Therefore, Applicants submit that independent claims 1, 7 and 8 are patentable.

The other claims are each dependent from one of the independent claims discussed above and are therefore believed patentable for at least the above-identified reasons.

Applicants respectfully request early passage to issue of the present application.

Please charge any additional fees or credit any overpayment by reason of this request to Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By:



Thomas F. Presson  
Reg. No. 41,442  
(212) 588-0800